Claims 1-11, 13-15, 17-20, and 46-69 are pending in the application. Claims 1-4, 6-11, 13-15, and 17-20 are amended. Claims 12, 16, and 21-45 are canceled. Claims 46-69 are new. Support for the amendments and for the new claims can be found in Figure 1; Figures 2-5; Figure 9; page 18, lines 10-22; page 14, line 11 through page 16, line 23; and in the claims as originally filed. No new matter is added.

I.   35 U.S.C. § 112, Second Paragraph: Asserted Indefiniteness

The examiner rejects claims 1, 11, 23, 31, 41, 42, and 44 as being indefinite. Applicants have canceled claims 23, 31, 41, 42, and 44, thereby rendering the rejection moot with respect to these claims. Applicants have amended claims 1 and 11 to address the concerns raised by the examiner. Claims 1 and 11, as amended, are definite.

II.   35 U.S.C. § 103: Asserted Obviousness

The examiner rejects claims 1-45 under 35 U.S.C. § 103 as obvious over *Lent, et al.*, Method and Apparatus for Real Time On Line Credit Approval, U.S. Patent 6,405,181 (June 11, 2002) (hereinafter "*Lent*") in view of *Walker, et al.*, System and Method to Performing On-Line Credit Reviews and Approvals, U.S. Patent 6,088,686 (July 11, 2000) (hereinafter "*Walker*"). With regard to claims 12, 16, and 21-45, this rejection is moot as these claims have been canceled. With regard to the remaining claims, this rejection is respectfully traversed. In rejecting the claims, the examiner states that:

> As per claims 1-10, Lent discloses a data processing system implemented method for identifying teaser surfers, the method comprising: receiving, by the data processing system, a credit history data for a creditor(see column 4 lines 18-47).
>
> Lent fail to explicitly teach summing by the data processing system, a total monthly credit card debt for all credit cards issued to the creditor for a one month period, wherein the total monthly credit card debt is summed for each of a predetermined number of months summing by the data processing system, a total monthly new credit card debt for all new credit cards issued to the creditor for a one month period, wherein the total monthly new credit card debt is summed for each of the predetermined number of months; calculating, by the data processing system, a monthly percentage of new credit card debt to total credit card debt for a one month period, wherein the monthly percentage of new credit card debt to total credit card debt is calculated for each of the predetermined number of months calculating, by the data processing system, an average percentage of new credit card debt to total credit card debt over the predetermined number of months.
>
> However Lent discloses a set of offers is derived from the credit report data and other applicant information stored in the application object. In a step 1008, the set of offers is displayed. In one embodiment, the offers are derived from the

FICO score and income of the applicant, which determine the risk of default, and also from a balance transfer amount specified in the offer. The balance transfer amount may be determined as a percentage of the total revolving balance that the applicant has on all outstanding credit cards in the credit report for the applicant. Both the credit limit offered to the applicant and the interest rate offered to the applicant may vary according to the amount of the total revolving balance that the applicant chooses to transfer to the new account.(see column 13 lines 47-60 and column 14 lines 51-57 and column 15 lines 1-9).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made that the teachings of Lent could have been adapted to perform the functions of summing by the data processing system, a total monthly credit card debt for all credit cards issued to the creditor for a one month period, wherein the total monthly credit card debt is summed for each of a predetermined number of months summing by the data processing system, a total monthly new credit card debt for all new credit cards issued to the creditor for a one month period, wherein the total monthly new credit card debt is summed for each of the predetermined number of months; calculating, by the data processing system, a monthly percentage of new credit card debt to total credit card debt for a one month period, wherein the monthly percentage of new credit card debt to total credit card debt is calculated for each of the predetermined number of months calculating, by the data processing system, an average percentage of new credit card debt to total credit card debt over the predetermined number of months because these functions are common in evaluating a credit report and further would have would have been a designer's choice of evaluation of a credit report. Further this would be an attempt to automate a known system.

Lent fail to explicitly teach comparing, by the data processing system, the average percentage of new credit card debt to total credit card debt to a preset cutoff average percentage of new credit card debt to total credit card debt; and issuing, by the data processing system, a credit card to the creditor based on the comparison of the average new credit card debt to total credit card debt to a preset cutoff average percentage of new credit card debt to total credit card debt.

However Walker discloses a method for performing an automatic on-line review of an applicant's application for a product or service offered by a financial institution, in real-time, receiving a first set of data into a data processing and communication system, said data relating to information provided by said applicant; receiving a second set of data into said data processing and communication system, said second set of data relating to the product or service requested by said applicant, using said first data to identify on a real time basis a relationship profile with said applicant, said relationship profile being based upon an amount of assets and liabilities said applicant has with the financial institution; performing a fraud verification on said first set of data, gathering credit reports from at least one credit bureau using said first set of data, comparing said credit reports against a minimum disaster policy criteria, assigning a disaster response code to said first set of data, preparing a debt burden value based upon said credit report and said first set of data, and comparing said debt burden value against a debt burden table parameter.(note abstract and see column 21 lines 9-23 and column 22 lines 1-2 and column 18 lines 51-56 and column 7 lines 30-50 and column 8 lines 66-67 and column 9 lines 1-17).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Lent to include comparing, by the data processing system, the average percentage of new credit card debt to total credit card debt to a preset cutoff average percentage of new credit card debt to total credit card debt; and issuing, by the data processing system, a credit card to the creditor based on the comparison of the average new credit card debt to total credit card debt to a preset cutoff average percentage of new credit card debt to total credit card debt taught by Walker in order to determine whether credit cards should be issued or not.

Office action of August 23, 2007, pp. 3-5.

The Examiner bears the burden of establishing a *prima facie* case of obviousness based on prior art when rejecting claims under 35 U.S.C. § 103. *In re Fritch*, 972 F.2d 1260, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992). The prior art reference (or references when combined) must teach or suggest all the claim limitations. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). In determining obviousness, the scope and content of the prior art are… determined; differences between the prior art and the claims at issue are… ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background the obviousness or non-obviousness of the subject matter is determined. *Graham v. John Deere Co.*, 383 U.S. 1 (1966). "Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue." *KSR Int'l. Co. v. Teleflex, Inc.*, No. 04-1350 (U.S. Apr. 30, 2007). "*Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.* Id. (citing *In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006))."

Although applicants have amended the claims to address the rejection under 35 U.S.C. § 112, second paragraph, the scope of the claims remains unchanged. Therefore, Applicants address the substance of the rejection. Applicants first address the rejection of claim 1. Claim 1, in its current form, is as follows:

> 1.   (Currently Amended) A processing system implemented method for identifying teaser surfers, the method comprising:
>   receiving, by the data processing system, a credit history data for a creditor;
>   calculating, by the data processing system, a first set of sums, wherein each sum in the first set of sums comprises a total credit card debt for all credit cards issued to the creditor for a corresponding, different one month period, and wherein a first total number of sums in the first set of sums equals a predetermined number of months;

calculating, by the data processing system, a second set of sums, wherein each sum in the second set of sums comprises a total new credit card debt for all new credit cards issued to the creditor for the corresponding, different one month period, and wherein a second total number of sums in the second set of sums equals the predetermined number of months;

calculating, by the data processing system, a third set of percentages, wherein each percentages in the third set of percentages comprises a percentage of new credit card debt to total credit card debt for the corresponding, different one month period, and wherein a third total number of percentages in the third set of percentages equals the predetermined number of months;

calculating, by the data processing system, an average percentage of new credit card debt to total credit card debt over the predetermined number of months;

comparing, by the data processing system, the average percentage of new credit card debt to total credit card debt to a preset cutoff average percentage, wherein, by comparing, a comparison is formed; and

determining, by the data processing system, whether to issue a credit card to the creditor based on the comparison.

II.A.   The Proposed Combination Does Not Teach or Suggest All of the Features of Claim 1

The examiner failed to state a *prima facie* obviousness rejection against claim 1 because the proposed combination of references, considered as a whole, does not teach or suggest the features of claim 1. The examiner asserts otherwise on the basis that *Lent* teaches considering the total amount of debt a creditor has when determining whether to issue a credit account; however, the examiner's assertions are manifestly incorrect.

Lent discloses a system for providing real-time approval of credit applications. *Lent*, Abstract. *Lent* teaches in the portions specifically cited by the examiner that:

> *Next, in a step 1006, a set of offers is derived from the credit report data and other applicant information stored in the application object. In a step 1008, the set of offers is displayed. In one embodiment, the offers are derived from the FICO score and income of the applicant, which determine the risk of default, and also from a balance transfer amount specified in the offer. The balance transfer amount may be determined as a percentage of the total revolving balance that the applicant has on all outstanding credit cards in the credit report for the applicant. Both the credit limit offered to the applicant and the interest rate offered to the applicant may vary according to the amount of the total revolving balance that the applicant chooses to transfer to the new account.*
>
> *...*
> *Next, in a step 1026 the system determines one or more balance transfer amounts based on the total revolving balance that the applicant has in various other credit card accounts. In one embodiment, the balance transfer amounts are calculated based on different percentages of the total revolving balance determined from all of the applicant's accounts found in the credit report. Then, in a step 1028, the system calculates for each total balance transfer amount choice that will be presented to the applicant, a predicted estimated revolving balance for the future that the applicant would be expected to maintain. The estimated total revolving balance may be equal to the balance transfer amount or*

> may be a function of the balance transfer amount. In one embodiment, the estimated total revolving balance does not depend on the balance transfer amount. In one embodiment, four possible percentages of the applicant's total revolving balance as determined by the credit report are presented to the applicant. *Those choices are none of the balance, one-third of the balance, two-thirds of the balance, and the full balance. Depending on which of those amounts is selected by the applicant, the system calculates a predicted total revolving balance for the future. Then, in a step 1030, the credit limit for the applicant is set to achieve a target dollar charge off rate based on the amount of the total revolving balance that the applicant elects to transfer and the risk of default.* The process then ends at 1032. ...

Lent, col. 13, ll. 47-60 and col. 14, l. 51 through col. 15 l. (emphasis to show portions cited by the examiner).

The cited portions of *Lent* teach that, "The balance transfer amount may be determined as a percentage of the total revolving balance that the applicant has on all outstanding credit cards in the credit report for the applicant." Additionally, *Lent* teaches that, "the system determines one or more balance transfer amounts based on the total revolving balance that the applicant has in various other credit card accounts." *Lent* goes on to state that the four possible percentages of the applicant's total revolving balance are: none of the balance, one third of the balance, two-thirds of the balance, and the full balance. Based on one of these four percentages, *Lent* calculates a predicted total revolving balance for the future.

However, these features have nothing to do with the claimed features of calculating the first, second, and third set of sums, as recited in amended claim 1. Furthermore, *Lent* does not, calculate "an average percentage of *new credit card debt* to total credit card debt over the predetermined number of months," as required by claim 1. Still further, *Lent* does not compare, "the average percentage of *new credit card debt* to total credit card debt to a preset cutoff average percentage," as required by claim 1. In fact, when claim 1 as a whole is compared to *Lent* as a whole, one of ordinary skill can readily see that the references have nothing to do with each other, other than that they both deal with consumer credit.

Additionally, contrary to the examiner's assertions, *Walker* also does not teach or suggest these same features of claim 1. The examiner's assertions to the contrary are manifestly incorrect.

Like *Lent*, *Walker* relates to an automated process for reviewing credit applications. Like *Lent*, *Walker* analyzes an applicant's credit history. *Walker*, Abstract. The goals that *Walker* attempts to address include the following:

> The present invention is therefore directed to the problem of developing a method and system for performing credit and liability reviews that: (1) identify a credit worthy applicant or provide an indication that an applicant is probably not credit worthy for the particular product being requested (thus eliminating the need to fulfill the entire sales session) to the LBR immediately at the time of the application; (2) provide systematic verification requirements; (3) provide a liability screen (demand deposit screen) for the financial institution; (4) provide

> pricing by tier for specified products; (5) provide an interface to service bankcard products; (6) enable maximum debt burden offer logic; and (7) provide application pending functionality.

Walker, col. 1, ll. 55-67.

Noticeably absent from this list is any notion of finding teaser surfers, which is the directed preamble of claim 1. Even if the examiner does not consider this feature a claimed feature, *Walker* does not teach or suggest the actual steps of claim 1, arranged as they are in claim 1. For example, *Walker* does not teach calculating first, second, and third sets of sums, as recited in claim 1. *Walker* does not teach comparing or determining, as recited in claim 1. The disclosure simply does not exist.

For example, the examiner refers to column 7, lines 30-50. This portion of *Walker* describes dividing evaluation of *previously established approval criteria* into two steps. However, sets of sums are not calculated or compared, as recited in claim 1.

In another example, the examiner refers to column 8, lines 66-67. This portion of *Walker* teaches that systematic completion of required verifications enable on-site acceptance of credit requests. However, sets of sums are not calculated or compared, as recited in claim 1.

In another example, the examiner refers to column 9, lines 1-17. That portion of *Walker* teaches the use of verification profiles, which indicate which types of verifications are required based on the amount requested and accepted. This presentation eliminates the need for continual calculation of which verifications are required before an application is completed. However, sets of sums are not calculated or compared, as required by claim 1.

In another example, the examiner refers to column 18, lines 51-56. This citation refers to claim 8 of *Walker*, which is as follows:

> 8. The method according to claim 1, further comprising the steps of:
> d) assigning a credit limit amount to said applicant;
> e) determining if requested loan amount is within the limits of the product maintenance file; and then
> f) approving disbursement of funds to said applicant

Walker, col. 18, ll. 51-56.

Again, on its face, nothing in the cited portion of *Walker* teaches calculating first, second, or third sets of claim 1, or the comparing feature of claim 1. The disclosure simply does not exist.

Nevertheless, the examiner refers to column 21, line 9 through column 22, line 2. That portion of *Walker* refers to claim 25 of *Walker*, which is as follows:

> 25. A method for performing an automatic on-line review of an applicant's application for a product or service offered by a financial institution, in real-time, comprising:
> receiving a first set of data into a data processing and communication system, said data relating to information provided by said applicant;

receiving a second set of data into said data processing and communication system, said second set of data relating to the product or service requested by said applicant;

using said first data to identify on a real time basis a relationship profile with said applicant, said relationship profile being based upon an amount of assets and liabilities said applicant has with the financial institution;

performing a fraud verification on said first set of data;

gathering credit reports from at least one credit bureau using said first set of data, comparing said credit reports against a minimum disaster/policy criteria;

assigning a disaster response code to said first set of data;

preparing a debt burden value based upon said credit report and said first set of data; and

comparing said debt burden value against a debt burden table parameter.

Walker, col. 21, l. 9 through col. 22, l. 2.

Again, on its face, nothing in the cited portion of *Walker* teaches calculating first, second, or third sets of claim 1, or the comparing feature of claim 1. The disclosure simply does not exist.

Nevertheless, the examiner states that:

9. In response to Applicant's arguments that Lent fail to teach or suggest" summing by the data processing system, a total monthly credit card debt for all credit cards issued to the creditor for a one month period, wherein the total monthly credit card debt is summed for each of a predetermined number of months summing by the data processing system, a total monthly new credit card debt for all new credit cards issued to the creditor for a one month period, wherein the total monthly new credit card debt is summed for each of the predetermined number of months and calculating, by the data processing system, a monthly percentage of new credit card debt to total credit card debt for a one month period, wherein the monthly percentage of new credit card debt to total credit card debt is calculated for each of the predetermined number of months calculating, by the data processing system, an average percentage of new credit card debt to total credit card debt over the predetermined number of months, comparing, by the data processing system, the average percentage of new credit card debt to total credit card debt to a preset cutoff average percentage of new credit card debt to total credit card debt; and issuing, by the data processing system, a credit card to the creditor based on the comparison of the average "new credit card debt to total credit card debt to a preset cutoff average percentage of new credit card debt to total credit card debt" the Examiner disagrees with Applicant's because these limitations were addressed as stated in a combinations of teachings.

Lent discloses a set of offers is derived from the credit report data and other applicant information stored in the application object. In a step 1008, the set of offers is displayed. In one embodiment, the offers are derived from the FICO score and income of the applicant, which determine the risk of default, and also from a balance transfer amount specified in the offer. The balance transfer amount may be determined as a percentage of the total revolving balance that the applicant has on all outstanding credit cards in the credit report for the applicant. Both the credit limit offered to the applicant and the

interest rate offered to the applicant may vary according to the amount of the total revolving balance that the applicant chooses to transfer to the new account. see column 13 lines 47-60 and column 14 lines 51-57 and column 15 lines 1-9 and Another component of the offer granted to the applicant that may be varied based on the balance transfer selected is a teaser rate or annual rate. A teaser rate is an interest rate that is temporarily extended to the applicant either on the amount transferred or on the amount transferred and purchases made for a certain period of time. The teaser rate is intended to incent the applicant to transfer a greater balance to a new account In one embodiment, the teaser rate is determined based on the percentage of the applicant's total revolving balance that the applicant elects to transfer. Thus, the amount transferred by the applicant controls not only the applicant's credit limit bLit also determines a teaser rate extended to the applicant. see column 15 lines 53-65.

Walker teaches a method for performing an automatic on-line review of an applicant's application for a product or service offered by a financial institution, in real-time, receiving a first set of data into a data processing and communication system, said data relating to information provided by said applicant;

receiving a second set of data into said data processing and communication system, said second set of data relating to the product or service requested by said applicant, using said first data to identify on a real time basis a relationship profile with said applicant, said relationship profile being based upon an amount of assets and liabilities said applicant has with the financial institution;

performing a fraud verification on said first set of data, gathering credit reports from at least one credit bureau using said first set of data, comparing said credit reports against a minimum disaster policy criteria, assigning a disaster response code to said first set of data, preparing a debt burden value based upon said credit report and said first set of data, and comparing said debt burden value against a debt burden table parameter note abstract and see column 21 lines 9-23 and column 22 lines 1-2 and column 18 lines 5156 and column 7 lines 30-50 and column 8 lines 66-67 and column 9 lines 1-17. Therefore it would have been obviously that Applicant's claimed limitations were addressed with the teachings of Lent and Walker.

Office action of August 23, 2007, pp. 22-24.

The examiner's extensive response primarily re-states the rejection. However, as shown above, the examiner can not dispute the plain, meaning of the claims and the references. As shown above, neither *Lent* nor *Walker* teach or suggest the features of claim 1, arranged as those features are in the claim. Therefore, under the standards of *In re Royka*, the examiner failed to state a *prima facie* obviousness rejection against claim 1.

II.B. The Examiner Failed To State a Proper Reason To Achieve the Legal Conclusion of Obviousness under the Standards of *KSR Int'l*.

Additionally, the examiner failed to state a *prima facie* obviousness rejection against claim 1 because the examiner failed to state a proper reason to achieve the legal conclusion of obviousness under the standards of *KSR Int'l*. The examiner does point to purported advantages to combining the references. However, the examiner does not logically connect these purported advantages to the *legal conclusion* of obviousness. Instead, the examiner only presents the purported advantages and then <u>assumes</u> that one of ordinary skill would reach the legal conclusion of obviousness. Such conclusory statements do not comport with the standards of *KSR Int'l*., which provides that *rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the **legal conclusion** of obviousness.* <u>Id.</u> (citing *In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006)) (emphasis supplied)."

Because the examiner has provided no reasoning to achieve the *legal conclusion* of obviousness, the examiner has failed to meet the requirements imposed by *KSR Int'l*. Therefore, the examiner failed to state a *prima facie* obviousness rejection against claim 1.

II.C. Claim 17, 66, and 68

The current form of claim 17 is as follows:

> 17. (Currently Amended) A data processing system implemented method for identifying teaser surfers, the method comprising:
>
> receiving, by the data processing system, a credit history data for a creditor;
>
> comparing, by the data processing system, an amount of new credit card debt to a total amount of credit card debt, wherein by comparing a comparison is formed; and
>
> determining, by the data processing system, whether to issue a credit card to the creditor based on the comparison and further determining whether the creditor is a teaser surfer.

As shown above, neither *Lent* nor *Walker* teach or suggest comparing an amount of *new credit card debt* to a total amount of credit card debt. The disclosure simply does not exist. Additionally, neither reference teaches or suggests determining whether the creditor is a *teaser surfer*, as required in claim 17.

Because neither reference, considered as a whole, teaches or suggests these claimed features, the proposed combination of references, considered as a whole, also does not teach or suggest these claimed features. Therefore, under the standards of *In re Royka*, the examiner failed to state a *prima facie* obviousness rejection against this claim, or against similar claims 66-69.

III. New Claims

New claims 46-69 contain features similar to those presented in claims 1 or 17. Therefore, for the reasons presented above, no *prima facie* obviousness rejection can be stated against new claims 46-69 in view of the cited references. Accordingly, this rejection is overcome.

IV. Conclusion

The subject application is patentable over the cited references and should now be in condition for allowance. The examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

DATE: November 21, 2007

Respectfully submitted,

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